

The implementation of
recommendations arising
from the Commission's
investigation into
Operation Aviemore -
a final report

24 October 2019



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Introduction

- [1] On 5 November 2015, the Corruption and Crime Commission reported deficiencies in investigatory action undertaken by the WA Police Force (Police) in Operation Aviemore, an investigation into the unlawful killing of Mr Joshua Warneke. The report exposed systemic issues regarding the investigative policies and the manner in which Police interacted with indigenous people. The Commission made seven recommendations for improvements to interviewing practices, the understanding and implementation of the *Criminal Investigation Act 2006* (CI Act) and the Police Manual.¹
- [2] The Police response to implementing these recommendations was tabled in Parliament on 2 December 2016.
- [3] In 2017/18, the Commission conducted a review of the actions taken by Police in response to the seven recommendations. This review culminated in a report tabled in Parliament on 4 April 2018, which concluded that five recommendations had been adequately responded to and therefore closed.
- [4] The Commission made a commitment to re-evaluate the Police response to the two outstanding recommendations in 12 months' time. In March 2019, Police provided a detailed response documenting their progress in relation to the two remaining recommendations.
- [5] This final report details the Commission's review of that response and provides an update in relation to the continued efforts of Police in progressing all recommendations.
- [6] In evaluating the Police response, the Commission reviewed the written submission provided and proposed meetings with the officers responsible for the implementation of planned initiatives. The Commission also scheduled a series of review activities to understand and observe the practical application of implemented initiatives. These activities included briefings from the Investigative Standards Unit (ISU), the WA Police Academy and the newly established Aboriginal Affairs Division (AAD). In addition, Commission officers attended relevant components of two investigative interviewing training courses and a full day Cultural Awareness Training Course delivered to Police employees.
- [7] The various Police teams were helpful in actively engaging with the Commission and providing relevant information.

¹ Commissioner's Orders and Procedures Manual.

- [8] Since the 2018 Commission review, changes in the Police structure have impacted on areas responsible for coordinating the response to the Commission's recommendations. Notably, the Office of Investigative Practices has been renamed as the Investigative Standards Unit (ISU) and aligned to the Standards and Practices Division as part of the Community and Coordination Portfolio.
- [9] The role of the Community and Coordination Portfolio, inclusive of the ISU and the new AAD, is to respond to current and emerging issues and/or risks that may impact on Police service delivery. With a focus on longer term initiatives, this new structure, with its direct reporting line to the Deputy Commissioner, is viewed by the Commission as evidence of a genuine commitment to support ongoing organisational change and continued improvement in its interactions with indigenous people.

Recommendations one, two, five, six and seven

- [10] Recommendations one, two, five, six and seven were reported on in the April 2018 Commission report, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore - A Further Report*. The report is available on the Commission website.

Recommendation three

The Commission recommends immediate attention be given to ascertain if the lack of knowledge disclosed is widespread. If so, the Commission recommends development of an ongoing training and refresher course in dealing with Aboriginal people with particular emphasis on language and culture.

Commission report

- [11] The Commission's investigation into Operation Aviemore identified systemic weaknesses in relation to the interviewing of Aboriginal witnesses and suspects. The Commission's investigation noted that investigating officers assigned to, or assisting with Operation Aviemore, had little or no contemporary experience in interacting with Aboriginal people from remote or regional locations, nor had they received any specialised training to assist them in conducting interviews with persons who may be faced with cultural or language barriers.
- [12] The extent of the training provided to the officers deployed was limited to a basic cultural awareness module delivered during their recruit training; which in most instances was many years prior. The Commission found that this lack of knowledge, experience, training and preparation significantly contributed to the overall failings noted during Operation Aviemore.

WA Police Force response

- [13] In 2016, Police advised the Commission that the available evidence did not support a conclusion that there was a widespread lack of knowledge in this area. Nonetheless, Police agreed to develop ongoing training to educate officers in aspects of Aboriginal languages and culture, and to emphasize the cultural competencies required in Police investigations. Police acknowledged the need for training for those "officers posted, or to be posted, to areas with high Aboriginal populations and officers tasked with interviewing Aboriginal people suspected of serious crimes".²

² Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, 5 November 2015, p 36.

- [14] In late 2017, Police provided an update to the Commission detailing a number of initiatives focussed on improving cultural awareness and the investigative interviewing of vulnerable people, including Aboriginal people. Police confirmed that training had been enhanced in a number of existing courses. The development and implementation of the Foetal Alcohol Spectrum Disorder (FASD) Interview Guide, to assist with interviewing persons with FASD and other vulnerabilities, was considered a significant and successful undertaking.
- [15] The Commission's review identified a wide range of initiatives being considered by Police to ensure officers were properly identifying vulnerabilities and applying appropriate practices. As most of the initiatives were still in development, a decision was made to seek a further update on its progress in 12 months' time.
- [16] In 2019, the Commission sought an update from Police. The Police response included an explanation of recent changes to the agency's structure and an update on the proposed initiatives. The following initiatives were detailed in the response:
- The establishment of a new AAD to help drive and embed cultural change within the agency. The AAD has developed a Reconciliation Action Plan and commenced work on a broader Aboriginal strategy. Additionally, an Aboriginal Police Advisory Forum, comprising of eight Aboriginal leaders from diverse backgrounds, has been formed to assist with external engagement and relationships with Aboriginal people and their communities.
 - An Aboriginal Cultural Security Training and Development Pathway has been drafted based upon recommendations arising from an external Cultural Security Audit conducted in 2017. In addressing short term recommendations, a new Aboriginal cultural awareness training package has been developed and delivered to new recruits and existing Police staff. This package aims to broaden the awareness of Aboriginal culture and provide practical strategies to communicate effectively with Aboriginal people.
 - ISU has developed a range of initiatives to assist investigators in identifying and considering vulnerable persons during investigative interviews. While the overarching Investigative Interviewing Policy and supporting procedures remain in development, ISU has:
 - included the expanded definition for vulnerable persons within existing policies and guidelines. These documents and the definition are readily available to investigators via the Investigative Practices intranet site;

- finalised and published an addendum for the Regional WA Induction Package for Investigative Interviewing. This guide defines a vulnerable person, expands on the Anunga guidelines, references FASD and provides guidance and considerations when interviewing; and
 - drafted amendments to the structure of the WA Police Investigation Doctrine for ease of use by frontline investigators.
- [17] The Commission notes that while Police have made the decision not to progress the week-long Vulnerable Persons Interview Course as previously proposed, awareness of the challenges faced by vulnerable persons during interview has been incorporated into a number of existing investigation training courses. Notably, this includes enhancement of the Specialist Child Interviewing Course to include mentally impaired persons. This redesign allows for use of specialist child interviewers to be considered for incapable adults.
- [18] Police have advised they remain committed to ensuring high quality interviews are being conducted by officers through contemporary training and support. A current research project with Edith Cowan University will review and assist with the redesign of Police's internal interview training. The initiative of having a cadre of Interview Advisors, providing additional support for investigating officers (during complicated and high profile interviews) remains on hold. In support of progressing this initiative, ISU has drafted a manual to assist with the further training of Interview Advisors.

Commission review

- [19] Police have taken a number of steps to improve Aboriginal cultural awareness across the agency. Notably, this includes the establishment of an AAD to assist with identifying and driving ongoing cultural change as required.
- [20] The Police Academy is delivering contemporary training on Aboriginal culture and issues affecting Aboriginal communities to recruits. Importantly, this training is being rolled out to existing Police staff. The training includes a focus on key policing considerations and alignment to the agencies cultural direction for the future.
- [21] There remains an identified weakness in the preparation for officers being deployed to remote areas of WA, especially with regards to the cultural considerations for a specific area. Beyond a local induction, which is highly dependent on the experience and availability of local staff, there is no mandated orientation or specific cultural training. It remains uncertain if

the Aboriginal Cultural Security Training and Development Pathway will address this training gap, and/or assist with refresher style cultural training in the future.

- [22] The Commission notes that Police have taken steps to widen the reach and influence of initiatives originally aimed at improving the investigative interviewing practices for Aboriginal people to include all vulnerable persons. The Commission's observations of the training, identified a significant level of importance being placed on respect for all individuals and an emphasis on considering all vulnerabilities. The Commission notes this as a positive step towards the overall improvement of investigative interviewing across Police.
- [23] **The Commission considers this recommendation to be complete.**

Recommendation four

The Commission recommends that attention is given to the administration of a caution for a person unfamiliar with their right to silence when English is not that person's first language. It is for the WA Police Force to identify the best approach to improving the administration of a caution.

Commission report

[24] The Commission's 2015 report focused on issues that arise when interviewees with English as a second language, including Aboriginal people, do not understand their rights in relation to answering questions asked by Police. The report found that reading the caution in English was not sufficient in all situations to ensure the necessary level of understanding.

WA Police Force response

[25] Police previously advised the Commission of the following initiatives that were being considered to address this recommendation:

- recording of the suspect caution in a variety of Aboriginal languages, with the correct language played to the interviewee prior to an interview; a similar model to that found in the Northern Territory;
- development of an Automated Interview Plan (AIP) to assist interviewers in identifying potential vulnerabilities, and applying the information necessary to address them within the context of an interview; and
- creation of an automated email within the custody system, which forwards information relating to the Audio Visual Record of Interview to the case officer.

[26] In their 2019 response, Police advised that the ISU were in the final stages of testing for the AIP. ISU explained that the AIP will prompt investigators to consider vulnerabilities when developing their interview plan, whether it be a witness or suspect interview. The AIP includes key information for the investigator on relevant legislation, policy and procedural requirements. A significant prompt is the consideration of the Anunga Guidelines for persons with vulnerabilities, not just for Aboriginal people.

[27] It is noted that the AIP was subsequently launched across the agency in July 2019. The broadcast accompanying the launch included a mandatory requirement for its use when interviewing a suspect for a serious offence pursuant to the CI Act s 118.

- [28] ISU provided the Commission with a demonstration of the AIP in its testing phase. ISU also summarised the program's data capabilities, noting the benefits of using the data to identify key languages requiring interpretation, to inform future undertakings.
- [29] The Commission notes the plan to support and promote the AIP with an automated email advice through the custody system has in principle support, however, is currently awaiting costing.
- [30] Police provided a further update on the pre-recorded caution initiative, explaining that despite a significant financial commitment, progressing the project beyond the planning phase had been challenging. The identification of more than 33 Aboriginal languages, some of which are not able to be translated, and difficulties in sourcing the required services to progress the initiative, may result in a change of approach.
- [31] Regardless of the current challenges in progressing the pre-recorded caution initiative, Police continue to report on the project monthly, with an ongoing commitment to the following deliverables:
- pre-recording into Aboriginal languages, the legislative, common law and case law rights associated with an arrested suspect and accompanying person; and
 - standardisation of the caution and CI Act rights to Aboriginal suspects during an Audio Visual Record of Interview, in the field and in any circumstances where those rights are required.

Commission review

- [32] While the implementation of the AIP will assist officers to identify the vulnerabilities of an interviewee and plan accordingly, the comprehension of the criminal caution remains an area for continued focus.
- [33] The Commission recognises the barriers to ensuring that the pre-recorded caution initiative is effective in aiding a proper understanding of the criminal caution. However, the Commission is satisfied that Police have acknowledged these barriers and continue to take action towards addressing the recommendation. The allocation of funds, appointment of a dedicated project team, and the ongoing reporting of project deliverables demonstrates a commitment by Police to managing this risk.
- [34] **The Commission considers this recommendation to be complete.**

Conclusion

- [35] The Commission's review of the progress of the remaining two recommendations has identified that Police are continuing not only to address the issues arising from Operation Aviemore, but have taken a wider approach to transforming the relationship between Police and the Aboriginal community.
- [36] The material provided to the Commission highlights key achievements made by Police over the last 12 months. This work, and the accompanying cultural shift, was mirrored in the messaging consistently shared by staff of the ISU, AAD and Police Academy.
- [37] The path taken by Police to build a foundation to support organisational change aimed at achieving 'Cultural Security', is refreshing. Police's appreciation of the infancy and associated challenges of this journey, echoes the Commission's previous sentiment that many of these issues do not have a straightforward solution, nor are they likely to be resolved quickly.
- [38] **The Commission considers that Police have taken responsibility to address all seven recommendations and therefore considers these closed.**